TAN BOON AUN

v.

TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & ANOR.

HIGH COURT MALAYA, PENANG
EDGAR JOSEPH JR J
[CRIMINAL APPEAL NO. 44-53-90]
3 AUGUST 1990

ADMINISTRATIVE LAW: *Habeas corpus - Extension of detention period - Further extensions of detention period of remand - When does period end - Whether there was a break in the chain of authorisation - Implied and inherent limitations - Statutory interpretation - Sections 3(2)(a)(b)(c), 3(1) of Dangerous Drugs (Preventive Measures) Act 1985.*

The applicant was arrested on 30 March 1988 at 2 p.m. At 2.30 p.m. Inspector WR signed an authorisation dated 30 March 1988 extending the period of detention by 24 hours commencing 31 March 1988. At 3.40 p.m. on 30 March 1988, Assistant Superintendent MA signed an authorisation pursuant to the provisions of proviso (b) to s. 3(2) of the Dangerous Drugs (Preventive Measures) Act 1985 (the Act) extending the detention period by 12 days with effect from 1 April 1988 at 2p.m. At about 9.30 a.m. on 13 April 1988 Deputy Superintendent Y signed an authorisation wherein it was stated that as it was not possible to complete the necessary investigations into the allegations made against the applicant within the period of 14 days permitted under s. 3(2)(c) of the Act he was extending the period of detention by 46 days with effect from 13 April 1988.

Counsel for the applicant argued that as Deputy Superintendent's Y's (DSY) authorisation did not take effect until 9.30 a.m. on 13 April 1988, there was no legal backing for the applicant's detention during the interval when Assistant Superintendent MA's detention ended and when Deputy Superintendent Y's authorisation took effect, that is, for the period from midnight on 12 April 1988 until 9.30 a.m. on 13 April 1988.

Held:

[1] A simple arithmetical calculation will show that the 12 days period of continued detention authorised by Assistant Superintendent MA ended at midnight on 12 April 1988 not 13 April 1988.

[2] When a statute confers power upon an authority without any express words of limitation there may still be inherent or implied limitations on that power. An inherent limitation is one which exists in the power as a permanent and inseparable element arising from the character and constitution of the authority on whom the power is confessed. An implied limitation is one which is implicit in the scheme of which the power forms part.

[3] The principle of inherent or implied limitations is based on deducing what is left unsaid from what is said and perceiving what is implicit in the express provisions and the scheme of the statutory instrument, the ambit of any one power cannot be as contained without considering its effect on the other powers.

[4] Nowhere in s. 3(2)(c) of the Act do the words "with the authority" appeal as they do in s. 3(2)(a) and (b). Therefore Deputy Superintendent Y's authorisation order s. 3(2)(c) was legally ineffective since there was no provision for it and in any event, it was premature since it was expressed to take effect from 13 April 1988 - one day prior to expiry of the second segment of 14 days.

[5] The report made by DSY under s. 3(2)(c) of the Act was only effective to authorise the continued detention of the applicant with effect from the moment of expiry of the second segment of 14 days. That is the commencement of the 17th day until the 60th day of detention pending enquiries, from 15 April 1988 to 28 May 1988, inclusive. It was thus ineffective to authorise the confirmed detention of the applicant for the whole of the two days, 13 April 1988 and 14 April 1988, these days not covered by Assistant Superintendent MA's authorisation. Therefore there was no legal backing for the applicant's detention on 13 April 1988 and 14 April 1988.

[6] In a matter of deprivation of liberty strict compliance with the law is necessary. In particular if the Court is satisfied that the detention of the subject has not been procured by steps "all of which were entirely regular" or that "every step in the process which led to such detention was followed with extreme regularity" the Court will not allow the imprisonment to continue.

[7] Since there was a flaw in the process of the applicant's continued detention, it cannot be said that the applicant had been detained under the powers conferred by this section as provided for in s. 3(4) of the Act.

[Applicant be set at liberty.]

Cases referred to:
Mangal Singh v. Union of India [1967] 2 SCR 109
Janapada Sabha v. Central Provinces Syndicate Ltd. [1970] 3 SCR 745
West v. Commissioner of Taxation (New South Wales) 56 CLR 657
State of South Australia v. Commonwealth 65 CLR 373
The King v. Commonwealth Court of Conciliation and Arbitration 66 CLR 488
Melbourne Corporation v. Commonwealth 74 CLR 31
State of Victoria v. Commonwealth 45 ALJR 251
James v. Commonwealth of Australia [1936] AC 578
Attorney-General v. Prince Ernest Augustus of Hanouver [1957] AC 461
Koh Yoke Khoon v. Minister of Home Affairs, Malaysia & Anor. [1988] 1 MLJ 45
Reverend Thomas Pelham Dale's [1880-8] 6 QBD 376
Re Tan Boon Liat [1977] 2 MLJ 108
Green v. Secretary of State for Home Affairs [1942] 1 KB 87
Ex p. Saksteder [1918] 1 KB 578

Legislation referred to:
Dangerous Drugs (Preventive Measures) Act 1985, ss. 3(1), (2), (2)(a), (2)(b), (2)(c), (4), 6(1)
Emergency Powers (Defence) Act 1939 [UK], s. 18B(8)

For the accused - Karpal Singh; M/s. Karpal Singh & Co.
For the respondents - Jalaldin bin Hussain

JUDGMENT

Edgar Joseph Jr J:

This applicant for a writ of *habeas corpus ad subjiciendum* was arrested under s. 3(1) of the Dangerous Drugs (Preventive Measures) Act 1985, ("the Act") on 30 March 1988 at 2 p.m. at Jalan Heng Choon, Butterworth, by Inspector Wan Rashid bin Haji Wan Zain. Half an hour later, Inspector Wan Rashid signed an authorisation dated 30 March 1988 (Ex. WR2 to encl. 15) pursuant to the provisions of proviso (a) to s. 3(2) of the Act wherein it was stated that because it was not possible to complete the necessary investigation into the allegations made against the applicant within the period of 24 hours, following arrest, he was extending

the period of detention by 24 hours commencing from 31 March 1988. By way of emphasis, immediately under the authorisation and to the left of Inspector Wan Rashid's signature, was a note which read "period of remand ends on 1 April 1988 at 2 p.m."

One hour and forty minutes thereafter, that is to say, at 3.40 p.m. on 30 March 1988, Assistant Superintendent Mohd. Arshad bin Abdullah signed an authorisation dated the same day, (Ex. MAA) to encl. 12) pursuant to the provision of proviso (b) to s. 3(2) of the Act wherein it was stated that because it was not possible to complete the necessary investigation into the allegations made against the applicant within the period of 48 hours he was extending the period of detention by 12 days with effect from 1 April 1988 at 2 p.m. Here too, by way of emphasis, immediately under the authorisation, and to the left of Assistant Superintendent Mohd. Arshad's signature, was a note which read: "period of remand ends on 12 April 1988" though no time is mentioned as in the case of the previous authorisation by Inspector Wan Rashid. In my opinion this period could only have ended at midnight on 12 April 1988.

At this point, I would interpolate to remark, for reasons which will be apparent later, that it is a fact of not a little moment that although assistant superintendent Mohd. Arshad had the power under s. 3(2)(b) to extend the period of the applicant's continued detention by up to 14 days, upon expiry of the initial 48 hours of detention, he chose to exercise it by extending detention by only 12 days - which of course he was perfectly entitled to do. Nevertheless, in consequence, this led to certain events which in turn gave rise to the problems now confronting the respondents, which lie at the heart of the present application.

To resume the narrative of events, on 13 April 1988 at **about 9.30 a.m.** Deputy Superintendent Yeap Hooi Pin, the Timbalan Penguasa Polis of the Jabatan Siasatan Jenayah, Contingent Police Headquarters, George Town, signed an authorisation dated the same day (Ex. YHP1 to encl. 13) **purportedly** pursuant to the provisions of proviso (c) to s. 3(2) of the Act wherein it was stated that because it was not possible to complete the necessary investigation into the allegations made against the applicant within the period of 14 days permitted under s. 3(2)(c) he was extending the period of detention by 46 days **with effect from 13 April 1988.** In this case there was no note by way of emphasis stating when the period of remand was to expire but presumably this was intended to be midnight 28 May 1970.

Upon the above facts, it was submitted by Encik Karpal Singh, for the applicant that as the authorisation by Assistant Superintendent Mohd. Arshad aforesaid authorised the continued detention of the applicant for a period of 12 days with effect from 1 April 1988, thus ending at midnight on 12 April 1988, and Deputy Superintendent Yeap's authorisation aforesaid did not take effect until 9.30 a.m. on 13 April 1988, there was no legal backing for the applicant's detention during the interval when Assistant Superintendent Mohd. Arshad's authorisation ended and when Deputy Superintendent Yeap's authorisation took effect; that is to say, for the period from midnight on 12 April 1988 until 9.30 a.m. on 13 April 1988. The point whether Deputy Superintendent Yeap's purported authorisation was valid was, however, never raised.

In reply Encik Jalaldin bin Hussain, Senior Federal Counsel submitted on behalf of the respondents that the authorisation of Assistant superintendent Mohd. Arshad which authorised the continued detention of the applicant for a period of 12 days with effect from 1 April 1988 ended **not** at midnight on 12 April 1988 but at midnight on 13 April 1988. Accordingly, since the authorisation by Deputy Superintendent Yeap was made at 9.30 a.m. on 13 April 1988 and authorised the continued detention of the applicant for a further period of 46 days with effect from 13 April 1988, there was no break in the chain of authorisation as contended for by Encik Karpal Singh.

I regret I am unable to agree with the submission of the learned Senior Federal Counsel that the 12 days' period of continued detention authorised by Assistant superintendent Mohd. Arshad expressed to take effect from 1 April 1988 ended at midnight on 13 April 1988. In my opinion, a simple arithmetical calculation will show it ended at midnight on 12 April 1988.

In a last ditch attempt to salvage the case for the respondents, the learned Senior Federal Counsel submitted that if, contrary to his primary submission, the continued detention authorised by Assistant Superintendent Mohd. Arshad ended at midnight on 12 April 1988 so that there was an apparent break in the chain of authorisation from midnight on 12 April 1988 until 9.30 a.m. on 13 April 1988, this defect was redeemed by the fact that Deputy Superintendent Yeap had on 1 April 1988 reported the circumstances of the arrest and detention of the applicant to Senior Assistant Commissioner of Police Mohd. Ghazali, a designated officer, as required under proviso (c) to s. 3(2), the effect of which was to authorise the continued detention of the applicant for more than 14 days which would have covered the period of the alleged break.

It was pointed out that as investigation into the activities of the applicant were completed on 27 April 1988 and, on the next day, a full report of same had been submitted by Senior Assistant Commissioner Mohd. Ghazali to the Minister, which resulted in the issuance on 14 May 1988 of a detention order under s. 6(1) - within the 60 day period from date of the initial arrest, which is the maximum permissible period of detention pending enquiries limited under s. 3(1) - the applicant's detention was authorised by law.

In answer, Encik Karpal Singh submitted that s. 3(2) had to be read in its proper perspective; that is to say, the chain of authorisation provided for therein had to be adhered to in the sequence provided for in sub-sections (a), (b) and (c) to s. 3(2). To quote him, "there are no short cuts; you can't jump to (c) without going through (a) and (b)."

As the provisions of s. 3(1), (2) and (4) are of pivotal importance to this application, it is necessary to reproduce them; they read as follows:

> (1) Any police officer may, without warrant, arrest and detain, for the purpose of investigation, any person in respect of whom he has reason to believe there are grounds which could justify his detention under subsection (1) of s. 6.
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> (2) Any person arrested and detained under this section may be detained in police custody for a period not exceeding sixty days without an order of detention having been in respect of him under subsection (1) of s. 6:
>
> Provided that:
>
> (a) he shall not be detained for more than twenty four hours except with the authority of a police officer or above the rank of Inspector;
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> (b) he shall not be detained for more than forty eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent of Police;
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> (c) he shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General or to a police officer designated by the Inspector-General in that behalf and the Inspector-General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister.
>
> (3) xxxx
>
> (3A) xxxxxx

(4) Any person detained under the powers conferred by this section shall be deemed to be in lawful custody, and may be detained in any prison, or in any police station, or in any other place authorised generally or specially by the Minister.

In my view, a clear issue of law, namely, one of statutory interpretation, is presented and such an issue is plainly open on *habeas corpus*. I must therefore interpret the statutory procedures which are laid down, and determine whether there has been a breach of the procedural requirements which entitles the detainee to be released. Thus the language of the legislation conferring the power to detain pending enquiries under s. 3 (1) is clearly important.

When a statute confers power upon an authority without any express words of limitation there may still be inherent or implied limitations on that power. An inherent limitation is one which exists in the power as a permanent and inseparable element arising from the character and constitution of the authority on whom the power is conferred. An implied limitation is one which is implicit in the scheme of which the power forms part.

The principle of inherent or implied limitations is based on deducing what is left unsaid from what is said, and perceiving what is implicit in the express provisions and the scheme of the statutory instrument. The ambit of any one power cannot be ascertained without considering its effect on the other powers. It is not difficult to cite an anthology of cases in support of these propositions. My choice of cases is as follows: *Mangal Singh v. Union of India* [1967] 2 SCR 109, 112-13; *Janapada Sabha v. Central Provinces Syndicate Ltd.* [1970] 3 SCR 745, 751; *West v. Commissioner of Taxation (New South Wales)* 56 CLR 657, 681-82; *State of South Australia v. Commonwealth* 65 CLR 373, 446-47; *The King v. Commonwealth Court of Conciliation and Arbitration* 66 CLR 488, 515-16; *Melbourne Corporation v. Commonwealth* 74 CLR 31, 70, 73-74, 81-82; and *State of Victoria v. Commonwealth* 45 ALJR 251.

In re The Central Provinces and Berar Act No. XIV of 1938, 1939 FCR 18, 42, Gwyer CJ said "A grant of power in general terms standing by itself would no doubt be construed in the wider sense; but it may be qualified by other express provisions in the same enactment, by the implications of the context, and even by considerations arising out of what appears to be the general scheme of the Act."

As was said by Lord Wright in *James v. Commonwealth of Australia* [1936] AC 578, 613,

> The question, then, is one of construction, and in the ultimate resort must be determined upon the actual words used, read not in vacuo but as occurring in a single complex instrument, in which one part may throw light on another ...

Then, further down at p. 627, he added that:

> A good draftsman would realise that the mere generality of the words must compel limitation in its interpretation ... It must take its colour from the context.

So too, in *Attorney-General v. Prince Ernest Augustus of Hanouver* [1957] AC 461, 473, Lord Somerville had occasion to remark:

> The key to the opening of every law is the reason and the spirit of the law - it is the '*animus imponentis*' the intention of the lawmaker. However to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detached from its context in the statute: it is to be viewed in connection with the whole context ...

It is with the above principles in mind that I turn to examine the issue which arises for consideration upon the submissions aforesaid.

Looking at s. 3(2), the first point to note is that the maximum permissible period of detention pending enquiries, is 60 days.

As for the 60 day period of detention pending enquiries, it is clear that the scheme of s. 3 envisages that the period of 60 days is divided into three segments of time; the initial segment of 48 hours which requires the authorisation of a police officer whose rank is not less that of an Inspector. (s. 3(a)), the second segment of 14 days which requires the authorisation of a police officer whose rank is not less than that of an Assistant Superintendent (s. 3(b)) and the third segment of 44 days which requires the **report** - not an authorisation, be it noted - of a police officer whose rank is not less than that of a Deputy Superintendent, regarding the circumstances of the arrest and detention, to the Inspector General or a designated officer who shall forthwith report the same to the Minister. (s. 3(2)(c)).

The scheme of s. 3(2) suggests that the longer the segment of time within the 60 day period, the higher the rank of the police officer whose intervention is required. That s. 3(2) envisages a certain sequence in the requisite authority to detain within the period of 60 days is obvious.

To recapitulate, in the present case, from the contemporary documents annexed to the affidavits of the Police Officers concerned, it is apparent that during the first segment of 48 hours ending at 2 p.m. on 1 April 1988 the applicant was being detained by virtue of the authorisation signed by Inspector Wan Abdul Rashid. As for the second segment of 14 days, the applicant was being detained by virtue of the authorisation signed by Assistant Superintendent Mohd. Arshad authorising continued detention for a period not of the full 14 days, but of 12 days only, ending at midnight on 12 April 1988. As for the third segment of 44 days, the applicant was being detained, **purportedly** by virtue of the authorisation signed by Deputy Superintendent Yeap, authorising continued detention for a period **not** of 44 days but of 46 days with effect from 13 April 1988.

I note, however, that nowhere in s. 3(2)(c) do the words "with the authority" appear as they do in s. 3(2)(a) and (b) To repeat, s. 3(2)(c) merely requires the making of a **report** by an officer of the rank of Deputy Superintendent or above, as to the circumstances of the arrest and detention, to the Inspector General or a designated officer who shall forthwith report the same to the Minister, in order to justify continued detention for a period of more than 14 days.

Strictly, therefore, Deputy Superintendent Yeap's authorisation under s. 3(2)(c) was legally ineffective since there was no provision for it and, in any event, it was premature since it was expressed to take effect from 13 April 1988 - one day prior to expiry of the second segment of 14 days. It would, however, have been sufficient for Deputy Superintendent Yeap to have made his report to a designated officer for purposes of s. 3(2)(c) to justify detention during the third segment of the 60 days time frame of detention pending enquiries, which is what he had **also** done, though he did that as early as 1 April 1988 while Inspector Wan Abdul Rashid's authorisation was still in force.

In these circumstances, the question which arises is whether Deputy Superintendent Yeap's report under s. 3(2)(c) can redeem any apparent flaw in the process authorising the applicant's continued detention upon expiry of Assistant Superintendent Mohd. Arshad's authorisation aforesaid at midnight on 12 April 1988 - the 12th day of detention.

In my opinion, Deputy Superintendent Yeap's report under s. 3(2)(c) was only effective to authorise the continued detention of the applicant with effect from the moment of expiry of the second segment of 14 days i.e., the commencement of the 17th day until the 60th day of detention pending enquiries i.e., from 15 April 1988 until 28 May 1988, both dates inclusive.

It was thus ineffective to authorise the continued detention of the applicant for the whole of the two days, 13 April 1988 and 14 April 1988, those being the 15th and the 16th days of detention and the last two days of the second segment of 14 days but, which as I have already noted, were not covered by Assistant Superintendent Mohd. Arshad's authorisation. Thus, there was no legal backing for the applicant's continued detention for the whole of those two days, 13 April 1988 and 14 April 1988.

If, contrary to my view, Deputy Superintendent Yeap's purported authorisation dated 13 April 1988 and signed at 9.30 a.m. is valid for the reasons stated, it still did not cover the applicant's continued detention from midnight 12 April 1988 until about 9.30 a.m. 13 April 1988 - a period of some 9½ hours.

In a matter of deprivation of liberty strict compliance with the law is necessary. In particular, if the Court is satisfied that the detention of the subject has not been procured by steps "all of which were entirely regular" or that "every step in the process which led to such detention was followed with extreme regularity", the Court will not allow the imprisonment to continue. (see *Koh Yoke Khoon v. Minister of Home Affairs, Malaysia and Anor.* [1988] 1 MLJ 45.

So, for example, in the *Reverend Thomas Pelham Dale's* case [1880-8) 6 QBD 376 Brett LJ said:

> Then comes the question upon the *habeas corpus.* It is a general rule, which has always been acted upon by the Courts of England, that if any person procures the imprisonment of another he must take care to do so by **steps, all of which are entirely regular,** and that if he fails to follow **every step** in the process with extreme regularity the Court **will not allow the imprisonment to continue.**
>
> (Emphasis added)

This is what Cotton LJ said at pp. 469, 470:

> I quite agree with Brett LJ that when persons take upon themselves to cause another to be imprisoned, they **must strictly follow the powers** under which they are assuming to act, and if they do not, the person imprisoned may be discharged, although the particulars in which they have failed to follow those powers may be **matters of mere form.**
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> (Emphasis added).

In *re Tan Boon Liat* [1977] 2 MLJ 108, 114, Lee Hun Hoe, CJ (Borneo) quoted with approval the above passages in the judgments of Brett and Cotton, L.J.

It follows, therefore, that on the ground that there was no legal backing for the applicant's detention for two full days i.e., on 13 April 1988 and 14 April 1988, his application for *habeas corpus* must succeed.

Nor would the deeming provision in s. 3(4) which reads "any person detained under the powers conferred by this section shall be deemed to be in lawful custody" be of any assistance to the respondents. The operative words are "any person detained under the powers conferred by this section". Having regard to my conclusions that there was a flaw in the process of the applicant's continued detention as aforesaid, it cannot be said that the applicant had been detained "under the powers conferred by this section". I am supported in this by certain English authorities to which I shall now refer.

Under s. 18B(8) of the Emergency Powers (Defence) Act 1939, there was included the provision that "any person detained in pursuance of these regulations shall be deemed to be in lawful custody ...", but it has been consistently held that such a phrase does not

preclude the Courts from determining whether the power in turn has been properly exercised and whether the Minister has acted within the powers conferred in the particular case. (See *Green v. Secretary of State for Home Affairs* [1942] 1 KB 87. See also *Exp. Sakstedar* [1918] 1 KB 578 for a similar interpretation of a similar provision in the Aliens Order 1914.

In the result, I direct that the applicant be set at liberty forthwith.

Also found at [1990] 2 CLJ 851